

# Federal Communications Commission

1270 Fairfield Road  
Gettysburg, PA 17325-7245

JUN 11 1996

VIA REGULAR & CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Robert J. Keller, P.C.  
Suite 200  
2000 L Street, N.W.  
Washington, DC 20036

Re: Marc Sobel  
Request for Information  
Pursuant to 308(b) of the  
Communications Act

Dear Mr. Keller:

As you are aware, the Commission designated the licenses of James A. Kay, Jr. for hearing to resolve issues which may result in the revocation of some or all of his licenses. At the time of designation, the Commission believed that because of Mr. Sobel's business relationship with Mr. Kay, some of his licenses were in fact controlled by Mr. Kay. Mr. Kay has asserted that this was in error. We requested that the Commission delete the Sobel licenses from the list designated in order to permit the Bureau to conduct a nonadjudicatory investigation of the relationship. (See attached Order at paragraph 5.)

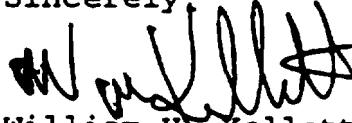
In order to expeditiously resolve this question, we request, pursuant to the authority vested in the Commission by 47 U.S.C. § 308(b), that Mr. Sobel provide further written statements of fact including:

- 1) A list of FCC licenses held by Mr. Sobel and/or entities in which he has an ownership interest;
- 2) a list of end users (by call sign) operating on his stations and the number of mobile transmitters being operated; and
- 3) a written statement relating the details of his business association with Mr. Kay, including a description of management and profit sharing agreements.

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We request that Mr. Sobel provide this information within 15 days of the date of this letter. If you have any questions regarding this matter, please contact me at (717) 338-2505.

Sincerely,

A handwritten signature in black ink, appearing to read "W. H. Kellett", with a stylized flourish at the end.

William H. Kellett  
Attorney

Office of Operations - Gettysburg

whk\kellr0609.95\rah

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**ATTACHMENT NO. 10**  
**SOBEL'S RESPONSE TO JUNE 11, 1996 308(B) REQUEST**  
**(without attachments)**

Law Office  
**Robert J. Keller, P.C.**  
2000 L Street, N.W. — Suite 200  
Washington, D.C. 20036

Telephone: 202.416.1670  
Facsimile: 301.229.6875  
Internet: rjk@telcomlaw.com

3 July 1996

Via Regular Mail and Facsimile (717-338-2698)

William H. Kellett, Esquire  
Office of Operations - Gettysburg  
Wireless Telecommunications Bureau  
Federal Communications Commission  
1270 Fairfield Road  
Gettysburg, PA 17325-7245

In re: Marc Sobel  
Request for Information Pursuant to Section 308(b) of the Communications Act

Dear Mr. Kellett:

This is in response to your June 11, 1996, letter requesting certain information from Mr. Marc Sobel, a Part 90 licensee and applicant. In our prior telephone conversations, you agreed to extend the time for a response to Wednesday, July 3, 1996. I am sending you this cover letter by facsimile. A hard copy of this letter, together with copies of the referenced attachments, is being sent to you by regular mail.

**General Observations.**

Before turning to the response, let me first state that Mr. Sobel is somewhat confused and disturbed by these events. For nearly two years now, it seems that some sort of "freeze" has been imposed on all of his pending matters before the Commission, and yet staff will not come forward with a clear and succinct explanation of just what its problem, if any, with Mr. Sobel is. We have repeatedly asked your office to process Mr. Sobel's long pending matters, but we have been stonewalled time and time again. We have asked that any questions regarding or charges against Mr. Sobel be communicated to us so that he can respond to them, but instead we seem to be unwillingly involved in some sort of cat-and-mouse game with your office.

On January 11, 1996, you sent a 308(b) letter to Mr. Sobel asking for essentially the same information you now seek. I communicated to you at that time that Mr. Sobel intended to answer the letter fully and candidly, but you then inexplicably withdrew the request. I then sent a letter to you on March 18, 1996, asking that you either process Mr. Sobel's matters or provide him with a statement of any problems so that he could address them. You ignored that letter, and after repeated status inquiries by me you advised that nothing would be done until the Commission ruled on the status of Mr. Sobel in WT Docket No. 94-147. When the Commission issued its order clarifying that Mr. Sobel is not a party to that proceeding, I again contacted you seeking action on my March 18 letter. You then suggested that I send a letter to Mr. W. Riley Hollingsworth, which I did on May 23, 1996. After that run-around, I now receive your June 11, 1996, letter, which puts us right back where we were months ago.

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It would be easier to accept your letter at face value and not to view it as some sort of pattern of harassment if it were not for (a) the history of dilatory and obfuscatory tactics described above,<sup>1</sup> and (b) the fact that the Bureau already has much of the information sought in the letter. I can only hope that by responding to your most recent request we can expeditiously move this matter forward. As I have discussed with you before and as stated in my letter to Mr. Hollingsworth, my client has authorized me to seek a judicial writ of mandamus if the staff does not thaw out this unlawful deep freeze soon. I know that neither of us wants to take this matter to court, but I am quite frankly not creative enough to think of many other options at this point.

#### **Request for Confidential Treatment.**

Your letter makes three specific requests for information. Item No. 2 requests "a list of end users (by call sign) operating on [Sobel's] stations and the number of mobile transmitters being operated." This information is clearly competitively sensitive and is kept considered by Mr. Sobel to be confidential. It most likely than falls within the definition of trade secrets and/or financial information which is automatically entitled to confidential treatment, 47 C.F.R. § 0.457(d), but it is most certainly information that could competitively and financially injure Mr. Sobel if disclosed to his competitors and/or to the general public. Accordingly, pursuant to Section 0.459 of the Commission's Rules and Regulations, 47 C.F.R. § 0.459, Mr. Sobel respectfully requests confidential treatment for this portion of his response. We have separated that portion of the response and sealed it under separate cover and clearly marked it as confidential.<sup>2</sup>

In the unlikely event that you deny this request for confidentiality, please be advised that Mr. Sobel intends to seek an application for review of such denial within the five day time period prescribed. 47 C.F.R. § 0.459(g). Moreover, Mr. Sobel further requests that his submission of this information be deemed voluntary, so that the information will be returned to him, unopened, in the event confidential treatment is denied. 47 C.F.R. § 0.459(e). Notwithstanding Mr. Sobel's obligations under Section 308(b) of the Communications Act, the requested information is being submitted voluntarily on the expectation that it will be afforded confidential treatment. In the

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<sup>1</sup> While Mr. Sobel is never given the benefit of a candid and straight forward explanation, the snippets of information that are forthcoming from the staff are internally inconsistent and facially inaccurate. For example, your June 11, 1996 letter states that the information is requested because, "[a]t the time of designation [in WT Docket No. 94-147], the Commission believed that because of Mr. Sobel's business relationship with Mr. [James A.] Kay[, Jr.], some of his licenses were in fact controlled by Mr. Kay." But this statement is patently inconsistent with the plain language of the designation order itself which stated: "Information available to the Commission . . . indicates that James A. Kay, Jr. may have conducted business under a number of names. Kay could use multiple names to thwart our channel sharing and recovery provisions . . . . We believe these names include . . . Air Wave Communications [and] Marc Sobel dba Airwave Communications." PR Docket No. 94-147, *Order to Show Cause, Hearing Designation Order and Notice of Opportunity for Hearing for Forfeiture* (FCC 94-315; released December 13, 1994). Thus, in designating the hearing the Commission obviously thought that Marc Sobel was a fictitious alias used by Mr. Kay for untoward purposes, while you are now trying to ignore that fact and claim that the Commission was merely concerned with the business relationship between Kay and Sobel. To be sure, the Commission may properly investigate either possibility, or both, but Mr. Sobel is entitled to have you once and for all tell him precisely what the potential problem is so he can address it and then get on with business. But for you to continually shift from one foot to the other, while refusing to process any of his FCC filings, is entirely inappropriate behavior which, if not corrected sua sponte, will have to be taken to an appropriate judicial forum.

<sup>2</sup> The same treatment is requested with respect to Attachment No. 3 hereto which is a copy of the management agreement pursuant to which Mr. Kay manages Mr. Sobel's 800 MHz licenses.

event such treatment is denied, Mr. Sobel respectfully reserves his right to withhold the information on the grounds that (a) Section 308(b) does not authorize the Commission to request this particular information, i.e., data that could identify specific customers as opposed to mere loading statistics;<sup>3</sup> and/or (b) such information may only be requested if it is afforded confidential treatment. Accordingly, Mr. Sobel considers this aspect of his submission to be voluntary, but has waived his right to withhold the information conditioned on receipt of confidential treatment.

#### **Specific Responses.**

Attachment No. 1 hereto is a list of FCC licenses held by Mr. Sobel. All licenses are held by Mr. Sobel as an individual sole proprietor, although they are sometimes issued in the one or more variations of his trade name, Air Wave Communications. Mr. Sobel has no ownership interest in any other FCC licenses.

Attachment No. 2 hereto is a list of end users (by call sign) operating on Mr. Sobel's stations and the number of mobile transmitters being operated. This information is being voluntarily submitted under seal, and subject to a request for confidential treatment as described more fully above. In the event the request for confidential treatment is denied, Mr. Sobel reserves his right to object to this particular aspect of the request.

Attachment No. 3 hereto is a copy of the management agreement pursuant to which Mr. Sobel's 800 MHz facilities are managed by Mr. James A. Kay, Jr. The details of the financial relationship are set forth in the agreement. It should be noted that, notwithstanding this agreement, Mr. Sobel personally maintains an active role in the 800 MHz facilities in that he owns, installed, and maintains the equipment and has full access to the licensed facilities. Moreover, the management agreement applies only to Mr. Sobel's 800 MHz facilities—he also owns and operates various other stations that have no relationship whatsoever to Mr. Kay, with the possible exception that Mr. Sobel may lease or sublease site facilities from Mr. Kay as to some of these stations.

Mr. Sobel, acting as an independent contractor, provides installation and maintenance services to the Los Angeles land mobile radio community. Some of the stations serviced by Mr. Sobel in this regard are owned and/or managed by Mr. Kay, but the Kay-affiliated stations represent only approximately 10% of Mr. Sobel's gross revenues. The vast majority of his income is derived from services provided to stations unaffiliated with Mr. Kay in any way.

In short, notwithstanding his personal friendship and a business relationship with Mr. Kay, Mr. Sobel is his own person. Mr. Sobel was active in the land mobile business in the Los Angeles area long before Mr. Kay, and he continues to be active as to many station not involving Mr. Kay at all. His management agreement with Mr. Kay comports with custom and practice in the SMR industry, and similar arrangements are made by other licensees with such industry leaders as Motorola and Nextel. Indeed, the Commission has approved as proper management arrangements in which the licensees had ceded much, much more of the day to day operational control of the facilities to the manager than has Mr. Sobel.

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<sup>3</sup> Mr. Sobel considers even the loading statistics themselves to be confidential business information, but there may be a legitimate regulatory purpose for a Commission review of such information. There is no apparent regulatory need, however, for the Commission or its staff, to ascertain the identity of specific customers.

William H. Kellett, Esquire  
3 July 1996  
Page 4

Kindly direct any questions or correspondence concerning this matter to the undersigned.

Very truly yours,

A handwritten signature in cursive script, reading "Robert J. Keller", followed by a long horizontal flourish.

Robert J. Keller

**CERTIFICATE OF SERVICE**

I hereby certify that on this 24<sup>th</sup> day of September, 1996, I have caused copies of the foregoing *Petition for Writ of Mandamus* to be sent by first class United States mail, postage prepaid, except as otherwise indicated below, to the following:

William E. Kennard, Esquire  
General Counsel  
Federal Communications Commission  
Washington, DC 20554

W. Riley Hollingsworth, Deputy Chief  
William H. Kellett, Esquire  
Office of Operations - Gettysburg  
Wireless Telecommunications Bureau  
Federal Communications Commission  
1270 Fairfield Road  
Gettysburg, PA 17325-7245

Lynard Hinojosa, Esquire  
Hinojosa & Khougaz  
11111 Santa Monica Blvd., Suite 1000  
Los Angeles, CA 90025-3344  
Counsel for the Administrator of the Estate  
of Gerard Pick a.k.a. Lance Hardy Advertising



Robert J. Keller  
Counsel for Petitioner

**ROBERT J. KELLER, P.C.**  
2000 L Street, N.W. - Suite 200  
Washington, DC 20036

Telephone: 202-416-1670  
Facsimile: 301-229-6875  
Email: [rjk@telcomlaw.com](mailto:rjk@telcomlaw.com)



**EXHIBIT MDS-4**

**ROBERT J. KELLER, P.C.**  
Federal Telecommunications Law  
4200 WISCONSIN AVE NW # 106-233  
WASHINGTON DC 20016-2143

Downtown Office:  
2000 L ST NW STE 200  
WASHINGTON DC 20036-4907  
Telephone 202.416.1670

Telephone 301.320.5355 / 888.320.5355  
Facsimile 301.229.6875 / 888.229.6875  
rjk@telcomlaw.com  
www.his.com/~rjk

31 January 1997

Reed H. Hundt, Chairman  
Federal Communications Commission  
Room 814 - Mail Stop 0101  
1919 M Street, N.W.  
Washington, D.C. 20554

James H. Quello, Commissioner  
Federal Communications Commission  
Room 802 - Mail Stop 0106  
1919 M Street, N.W.  
Washington, D.C. 20554

Rachelle B. Chong, Commissioner  
Federal Communications Commission  
Room 844 - Mail Stop 0105  
1919 M Street, N.W.  
Washington, D.C. 20554

Susan Ness, Commissioner  
Federal Communications Commission  
Room 832 - Mail Stop 0104  
1919 M Street, N.W.  
Washington, D.C. 20554

William E. Kennard, General Counsel  
Federal Communications Commission  
Room 614 - Mail Stop 1400  
1919 M Street, N.W.  
Washington, D.C. 20554

Michele Farquhar, Chief  
Wireless Telecommunications Bureau  
Room 5002 - Mail Stop 2000  
2025 M Street, N.W.  
Washington, D.C. 20554

In re: Marc D. Sobel d/b/a Air Wave Communications  
U.S. Court of Appeals for the District of Columbia  
Case No. 96-1361

Ladies and Gentlemen:

I am writing you in the hope that we can resolve a matter before you without the need for further litigation or the unnecessary consumption of public and private resources.

For more than a year I have been attempting, unsuccessfully, to get resolution of various matters which my client, Mr. Marc D. Sobel, has pending before the Commission. Mr. Sobel made similar efforts for quite some time before I was retained to represent him. Wireless Telecommunications Bureau staff is withholding action on all of Mr. Sobel's pending applications and requests. When we make inquiries into this, we are told that the reason for the processing delays is an investigation of Mr. Sobel. Accordingly, Mr. Sobel has made every effort to cooperate with the Bureau staff to facilitate its investigation. It appears that the staff has no interest in learning and addressing the facts, but instead is using the "investigation" as part of some undisclosed strategy that may or may not involve Mr. Sobel.

On several occasions over the past year or more, I have advised Bureau staff, both orally and in writing, that Mr. Sobel is willing to sit down with Commission personnel and provide any information and answer any questions that might help in resolving this matter. These overtures have been ignored. When a request for information pursuant to Section 308(b) of the Communications Act was sent to Mr. Sobel on 19 January 1996, I advised Bureau staff of Mr. Sobel's intention to provide a complete answer. The Bureau's response to that act of

cooperation was to withdraw the request, only to curiously issue another such request a month later, on 22 February 1996. Mr. Sobel timely provided the Commission with a complete response to the second request. At every step along the way, I have repeatedly made clear Mr. Sobel's willingness to meet with Commission staff, to discuss fully and candidly whatever the concerns of staff are, and to do whatever he can to resolve or cure any problems. The only response to these good faith efforts has been silence and continued inaction on Mr. Sobel's pending applications and requests. Short of the noninformative reference to an "investigation," Bureau staff will not even advise Mr. Sobel of the reasons such stonewalling.

It was thus out of frustration that Mr. Sobel, on 24 September 1996, submitted to the United States Court of Appeals for the District of Columbia Circuit, a *Petition for Writ of Mandamus*, asking for an order compelling the Commission "either to take such actions necessary to grant the Sobel Filings or to provide Sobel with a detailed statement of the reasons why the Commission is unable to grant one or more of the Sobel Filings." In compliance with an order of the Court, the Commission, through its Office of General Counsel, on 27 January 1997 submitted the *FCC Opposition to Petition for Writ of Mandamus*. On page one of that response, Commission counsel states: "[T]he Commission currently has before it a staff recommendation for action directly responsive to Sobel's complaint. We anticipate Commission action on the staff's recommendation soon." And again, on page six of the response, Commission Counsel states: "[T]here is presently pending before the Commission a staff proposal that is directly responsive to the complaints set forth in the petition. We expect the Commission action on that recommended action soon."

It appears, therefore, that Bureau staff has taken this matter to the full Commission and has even gone so far as to recommend a specific action to the Commission. While that in itself is not remarkable, it makes absolutely no sense for Bureau staff to go to this extreme without first taking advantage of Mr. Sobel's repeated offers to make himself available for questioning, to provide whatever information may be needed, and to cooperate in any way he can to resolve this matter. It almost seems that Bureau staff is anxious to have its "recommended action" adopted before the Commission has an opportunity to hear Mr. Sobel's side of the story.

But we need not attempt to divine the Bureau's motives. It is enough for the Commissioners to recognize that Bureau staff, purporting to have some serious questions about Mr. Sobel, is willing to recommend formal Commission action without having fully investigated the matter, indeed, having steadfastly refused to meet with the very target of their suspicion who has been begging for an audience for more than a year. The staff's unexplained refusal to discuss this matter with Mr. Sobel should give you reason to question the accuracy and veracity, if not the good faith, of whatever information they have communicated to you about Mr. Sobel.

We respectfully request that, prior to acting on the staff recommendation before you, whatever it may be, you first give Mr. Sobel an opportunity to come forward and to hear first hand what the Bureau staff's concerns are. Mr. Sobel will use his best efforts to answer all questions, and to reach a mutually satisfactory resolution of the matter. Mr. Sobel is prepared to come to Washington on short notice to meet with you, your staff, or any other Commission personnel necessary to advance this matter. I will be making calls next week to inquire about setting up one or more meetings to discuss this matter. I urge you to take advantage of this offer to resolve this matter informally. It would certainly be in the best interest of the Commission, as well as the public interest, at least to explore the possibility of a less involved and confrontational resolution before committing the agency's time and resources to formal proceedings.

Very truly yours,



Robert J. Keller  
Counsel for Marc D. Sobel d/b/a Air Wave Communications

cc: C. Grey Pash, Jr., Esquire (Office of the General Counsel)  
W. Riley Hollingsworth, Esquire (Wireless Telecommunications Bureau)

**EXHIBIT MDS-5**

**ROBERT J. KELLER, P.C.**  
Federal Telecommunications Law  
4200 WISCONSIN AVE NW # 106-233  
WASHINGTON DC 20016-2143

Downtown Office:  
2000 L ST NW STE 200  
WASHINGTON DC 20036-4907  
Telephone 202.416.1670

Telephone 301.320.5355 / 888.320.5355  
Facsimile 301.229.6875 / 888.229.6875  
rjk@telcomlaw.com  
www.his.com/~rjk

11 February 1997

**VIA FACSIMILE**

Reed H. Hundt, Chairman  
Federal Communications Commission  
Room 814 - Mail Stop 0101  
1919 M Street, N.W.  
Washington, D.C. 20554

James H. Quello, Commissioner  
Federal Communications Commission  
Room 802 - Mail Stop 0106  
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William E. Kennard, General Counsel  
Federal Communications Commission  
Room 614 - Mail Stop 1400  
1919 M Street, N.W.  
Washington, D.C. 20554

Michele Farquhar, Chief  
Wireless Telecommunications Bureau  
Federal Communications Commission  
Room 5002 - Mail Stop 2000  
2025 M Street, N.W.  
Washington, D.C. 20554

In re: **URGENT REQUEST FOR SPECIAL RELIEF**  
Marc D. Sobel d/b/a Air Wave Communications  
U.S. Court of Appeals for the District of Columbia  
Case No. 96-1361

Ladies and Gentlemen:

I understand that the Commission may have adopted a hearing designation order involving Mr. Marc D. Sobel d/b/a Air Wave Communications. **FOR THE REASONS DISCUSSED BELOW, WE URGENTLY REQUEST THAT YOU DELAY ISSUING THE TEXT OF ANY SUCH ORDER OR GIVING ANY PUBLIC NOTICE OF THE ACTION.**

On 31 January 1997 I wrote to you concerning the referenced matter. A copy of that letter is attached for convenient reference. Upon hand delivering the letter to the addressees, I contacted the office of the Chief of the Wireless Telecommunications Bureau to attempt to arrange a meeting. All of last week I received no response from the Wireless Bureau. Yesterday I received a telephone call from two members of the Wireless Bureau staff who advised me that I could come in for a meeting if I wanted, but that the Commission had already adopted an item in this matter. I was further advised that the item adopted is a hearing designation order seeking revocation of the licenses held by Mr. Sobel.

Bureau staff clearly indicated to me that a meeting would not be useful in resolving the matter without hearing insofar as the Commission had already adopted a designation order. But whatever action you may have adopted, it is not effective until "the date of public notice of such action as . . . defined in §1.4(b) of these rules."<sup>1</sup> If you defer releasing the text or a public notice, you will defer the effectiveness of your action, thereby affording an opportunity to resolve this matter without hearing.<sup>2</sup> We strongly urge you to do so. The ability to resolve matters without unnecessary litigation will be complicated tremendously if the matter is designated for hearing. The hearing would be a restricted proceeding, subject to the ex parte rules, thereby severely hampering both Mr. Sobel's and the Bureau's ability to communicate with the Commission about the matter. And while the ex parte rules would not preclude communication between Mr. Sobel and the Bureau, such consultation will be of limited value to potential dispute resolution insofar as the Bureau would be merely a party to the proceeding, unable to make or implement any decisions.

Now is the time to explore at least the possibility of an informal resolution without hearing. At this pre-designation stage the Bureau is still in its delegated authority role and has a great deal of flexibility in dealing with the issues presented. Currently either Bureau or Mr. Sobel can communicate freely with the Commission. If the matter can not be resolved, a hearing is still available to the Commission as an option. But after holding Mr. Sobel's matters in abeyance for more than three years while "investigating" him, certainly the Commission will not be inconvenienced by delaying the release of a designation order for a short time to explore the possibility of avoiding the litigation altogether.

I had assumed, perhaps incorrectly, that when the Commission staff raises questions about a licensee, the appropriate response is for the licensee to cooperate with the Commission in an effort to understand the concern and take whatever corrective measures may be indicated. But the Bureau's unwillingness to deal informally with Mr. Sobel would tend to indicate that the more prudent course would be to adopt a defensive posture, being entirely uncooperative from the first sign of trouble, on the theory that the only way out of the situation is through an adjudicative hearing in which staff will be an adversary party. Surely this is not a message the Commission wishes to send.

It is a mystery why the Bureau would insist on rushing straight to a hearing when Mr. Sobel has repeatedly expressed a willingness to cooperate and share information and a desire to meet in an effort to reach an informal resolution of any matters of concern to the Bureau. One would expect this to be a far more preferable avenue, and certainly one that should at least be explored before going to a hearing. We therefore urge you to defer the effectiveness of any designation order and to direct your staff to work with Mr. Sobel toward an informal resolution of this matter.

Very truly yours,



Robert J. Keller  
Counsel for Marc D. Sobel d/b/a Air Wave Communications

cc: C. Grey Pash, Jr., Esquire (Office of the General Counsel)  
W. Riley Hollingsworth, Esquire (Wireless Telecommunications Bureau)  
William Kellett, Esquire (Wireless Telecommunications Bureau)  
Gary Schonman, Esquire (Wireless Telecommunications Bureau)

<sup>1</sup> Section 1.103(a) of the Commission's Rules and Regulations, 47 C.F.R. §1.103(a).

<sup>2</sup> Even if you had already released the designation order, you would have the requisite authority to set aside that action on your own motion.

**EXHIBIT PR-1**

James A. Kay, Jr.  
P. O. Box 7890  
Van Nuys, CA 91409  
Ph. (818) 894-3566  
FAX (818) 782-7101  
12/14/95

Via Fax to: (310) 865-0736

Federal Communications Commission  
18000 Studebaker Rd. Room 660  
Cerritos, CA 90701

Attn.: Mr. Jim Zoulek

Re: Urgent request for inspection

Dear Sir:

Today while accessing conventional SMRS station call sign WNYR747, licensed to James A. Kay, Jr., it was discovered a user was operating on this repeater without our knowledge or authorization. While technically this user would be "authorized" under our license the user's radios had been programmed by a radio shop to use this station without our knowledge or consent. The user was contacted over the air and gave us their name, address, and phone number.

The user's information is:

Pro Roofing  
3029 W. Pico Blvd.  
Los Angeles, CA 90006  
(213) 733-2411

The person we spoke with identified herself as "Young".

Young stated the radio company that programmed and installed her radios was:

Century Communications  
Harold Pick  
5310 Century Blvd.  
Los Angeles, CA

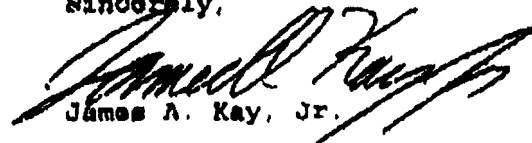
I respectfully request your office conduct an inspection of the radios being used by Pro Roofing at the earliest possible time. The act by Pick of programming the radios of Pro Roofing to use the services of my repeater constitutes a criminal act - theft of services. Since more than 1 person



was involved in this criminal act a charge of conspiracy also applies. While it is not within the scope of the FCC to pursue such legal actions an inspection by your offices, which would confirm the above information, would prove invaluable in a court of law for criminal and civil prosecution of Pick.

Your attention to this matter will be sincerely appreciated. If you require further information please contact me at your earliest convenience.

Sincerely,



James A. Kay, Jr.

**EXHIBIT PR-2**



# FEDERAL COMMUNICATIONS COMMISSION Telefax Cover Sheet

Date 9-16-96**FROM:**

Name: James Lafontaine  
Bureau/O: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax Number: 310-865-0736

**TO:**

Name: James Kay Jr  
Organization: \_\_\_\_\_  
Office: \_\_\_\_\_  
Fax Number: FIB-782-7101

**SPECIAL INSTRUCTIONS:**

Jim:  
Is this one problem still  
occurring.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

This Cover Sheet is Page 1 of 3 Pages

James A. Kay, Jr.  
P. O. Box 7890  
Van Nuys, CA 91409  
Ph. (818) 894-3566  
FAX (818) 782-7101  
12/14/95

Via Fax to: (310) 865-0736

Federal Communications Commission  
18000 Studebaker Rd. Room 660  
Cerritos, CA 90701

Attn.: Mr. Jim Zoulek

Re: Urgent request for Inspection

Dear Sir:

Today while accessing conventional SMRS station call sign WNYR747, licensed to James A. Kay, Jr., it was discovered a user was operating on this repeater without our knowledge or authorization. While technically this user would be "authorized" under our license the user's radios had been programmed by a radio shop to use this station without our knowledge or consent. The user was contacted over the air and gave us their name, address, and phone number.

The user's information is:

Pro Roofing  
3029 W. Pico Blvd.  
Los Angeles, CA 90006  
(213) 733-2411

The person we spoke with identified herself as "Young".

Young stated the radio company that programmed and installed her radios was:

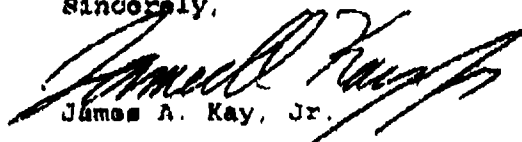
Century Communications  
Harold Pick  
5310 Century Blvd.  
Los Angeles, CA

I respectfully request your office conduct an inspection of the radios being used by Pro Roofing at the earliest possible time. The act by Pick of programming the radios of Pro Roofing to use the services of my repeater constitutes a criminal act - theft of services. Since more than 1 person

was involved in this criminal act a charge of conspiracy also applies. While it is not within the scope of the FCC to pursue such legal actions an inspection by your offices, which would confirm the above information, would prove invaluable in a court of law for criminal and civil prosecution of Pick.

Your attention to this matter will be sincerely appreciated. If you require further information please contact me at your earliest convenience.

Sincerely,



James A. Kay, Jr.

**EXHIBIT PR-3**

**AFFIDAVIT**

I, MARC SOBEL, state and declare that the following is true and correct.

1. If sworn as a witness, I can testify competently to the facts herein.

2. I am the owner of AIRWAVE COMMUNICATIONS, a two-way radio dealer. My business is located at 15705 Superior Street, North Hills, California 91343.

3. I have been involved in the two-way radio communication system business for twenty years. I am intimately familiar with communications equipment. In the course of my work, I have had extensive experience in the programming, tuning, repairing, and licensing of two-way radio communication systems, including Federal Communications Commission regulations regarding the licensing, operation, and frequency assignment of two-way radio communications systems.

4. On December 14, 1995, I was requested by JAMES A. KAY, JR. of LUCKY'S TWO-WAY RADIOS to activate the radio communications system for one of his customers. The customer was to be activated on channel frequency 852.6875MHz. Frequency 852.6875MHz is a frequency upon which JAMES A. KAY, JR. is licensed to operate two-way radio communications by the FCC under call sign WN7R747. Each specific radio frequency used for two-way radio communications is assigned both a frequency to communicate upon and a call sign. A two-way radio communications system usually requires a stationary base radio, mobile or portable units, and a mountaintop repeater. The mountaintop repeater equipment is usually owned by a commercial repeater service

1 provider. When a customer contracts for a two-way radio system,  
2 they are essentially contracting to have their radios programmed  
3 to operate on a specific frequency and access tone, and relay  
4 their communications through the mountaintop repeater owned by the  
5 commercial repeater service provider. Any use of a mountaintop  
6 repeater without the consent of the commercial repeater service  
7 provider is a theft of services. It is equivalent to receiving  
8 television cable programming from a licensed cable operator  
9 without consent.

10 5. Prior to programming the repeater to allow the  
11 customer's radios to operate on frequency 852.6875MHz, I checked  
12 the frequency to ascertain the amount of communications traffic  
13 presently operating on the frequency. This is a routine procedure  
14 when placing a new customer on a frequency to be sure that quality  
15 service is provided. Immediately upon checking this frequency, I  
16 noticed that the volume of communications traffic was unusually  
17 heavy. I further noticed that the source of this traffic was a  
18 Korean speaking company which appeared to be using KAY's repeater.

19 6. I activated LUCKY'S TWO-WAY RADIOS' customer onto  
20 frequency 852.6875MHz. In order to allow for such activation, a  
21 specific tone access code was selected and activated for the  
22 customer's use. This access code would purportedly allow only  
23 this customer to operate a two-way radio communications system on  
24 this frequency using a specific mountaintop repeater.

25 7. Using the radio communication system available at  
26 LUCKY'S TWO-WAY RADIOS, I investigated what access code was being  
27 used by the Korean speaking company. I determined that the access  
28 code so used was 203.5Hz. I determined that this 203.5Hz access



1 code was activated solely for use on LUCKY'S TWO-WAY RADIOS'  
2 repeater located at Mount Lukens, California, as a spare or  
3 serviceman access code. Such codes are used only for repair  
4 services. To my knowledge, the 203.5Hz tone access code is not  
5 active on any other repeater in the Greater Los Angeles Area.

6 8. I inquired of JAMES A. KAY, JR. who told me that he  
7 had no customers assigned to this access code, and that if anyone  
8 was using this code, such use was unauthorized.

9 9. Immediately thereafter, I used a LUCKY'S TWO-WAY  
10 RADIOS' radio to contact the Korean company operating the KAY  
11 repeater on frequency 852.6875MHz. The Korean company was  
12 cooperative after I had contacted them and they identified  
13 themselves as PRO ROOFING and provided a telephone number of (213)  
14 733-2411.

15 10. On December 14, 1995, I called the telephone number  
16 provided and spoke with a woman who identified herself as "YOUNG."  
17 She provided a business address of 3029 West Pico Boulevard, Los  
18 Angeles, California 90006. She told me that her radio  
19 communication service and system was provided by HAROLD PICK.  
20 She stated that her radios were "worked" on about a month before,  
21 and that the work had been performed by HECTOR, a person she  
22 identified as an employee of HAROLD PICK. She stated that she had  
23 seven or eight radios.

24 11. On December 14, 1995, in order to further verify  
25 that the KAY Mount Lukens repeater was indeed being used for  
26 business communications by PRO ROOFING, I programmed the repeater  
27 to activate on access tone 203.5Hz, but not to repeat voice  
28 communications. This is a common testing mode procedure used to